

SUPPORT FOR THE AMENDMENT

Support for the amendment to the specification and claims 24-26 is found in the examples of the specification. No new matter would be added to this application by entry of this amendment.

Upon entry of this amendment, claims 1-3, 6-11, 14-16, 20 and 23-26 will now be active in this application.

### REQUEST FOR RECONSIDERATION

The claimed invention is directed to a foamed composition obtained by foaming an oil-in-water type emulsion comprising: 7-35 wt.% of an oil phase consisting of 30-90 wt. % of diglycerides, 65-93 wt. % of a water phase containing 15-60 wt. % of sugars and/or sugar esters and an emulsifier having an HLB of 8 or more, the emulsion having a volume-average particle diameter of 0.9  $\mu\text{m}$  or less and the composition having a specific gravity of 0.1-0.9  $\text{g}/\text{cm}^3$ .

Applicants wish to thank examiner Metzmaier for indicating that claims limited to an oil phase consisting of specified amounts of triglyceride, monoglyceride and diglyceride as well as phytosterol and antioxidants would be allowable. Applicants have now amended claims 1 as well as the dependent claims to reflect such allowable subject matter. Applicants note that page 8 of the official action suggest that claims 8-11 and 16 should also recite the “consisting of” language to be consistent with the use of “consisting of” in claim 1.

Applicants note that the term “consisting of” is used two times in claim 1, a first time to close the description of the oil phase and the second to close the description of the fat or oil.

Accordingly, the fat or oil is limited to 1 to 69.9% by weight of triglycerides, from 0.1 to 9% by weight of monoglycerides and from 30 to 90% by weight of diglycerides, and optionally a vegetable sterol and optionally an antioxidant. However, explicit to the recitation of triglyceride, diglyceride and monoglyceride is the presence of fatty acids in a molar amount to provide for a triglyceride, diglyceride and monoglyceride, respectively. Each of claims 8-11 and 16 further describe the composition of the already closed fatty acid composition.

Thus, claim 8 which recites that the fatty acids comprising the diglyceride comprises 20-65% of oleic acid is in the context of a diglyceride which is already comprised of 100 wt. % of fatty acids. Applicants’ use of the term “comprising” does not open the claim beyond the

already explicit 100 wt. % of fatty acids for the glycerides and in particular the diglyceride.

Accordingly, the use of the transitional phrase “comprising” in claims 8-11 and 16 is appropriate.

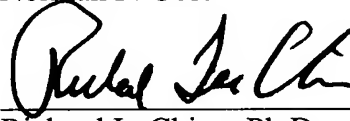
The rejection of claims 24-26 under 35 U.S.C. §112, second paragraph and the objection to the specification has been obviated by appropriate amendment.

As recognized by the examiner, the recited weight ratios recited in claims 23-26 and on page 13 of the specification are inconsistent with the specification examples. Applicants have now amended the claims and specification to be consistent with the weight ratios exemplified in the application. No new matter would be added to this application by entry of this amendment as inversion of the ratio of oil or fat to emulsifier would be clearly recognized by one of ordinary skill in the art in view of the specification examples and immediately envision the correct depiction of the ratio being base on the weight of fat or oil to emulsifier. Withdrawal of this ground of rejection is respectfully requested.

Applicants submit that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

A handwritten signature in black ink, appearing to read "Richard L. Chinn", is written over a horizontal line.

Richard L. Chinn, Ph.D.  
Registration No. 34,305

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)